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Paper No. 18

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JUN 15 1995

OFFICE OF TERMINAL
DISCLAIMERS
AND PATENTS

In re Application of :
Carol A. Westbrook :
Application No. 07/784,222 :
Filed: October 28, 1991 :
Attorney Docket No. ARCD:010/UCH :

ON PETITION

This is a decision on the petition, filed March 29, 1995, under 37 CFR 1.183 and 1.137(a) to revive the above-identified application and waive the terminal disclaimer requirement in 37 CFR 1.137(c).

The petition is granted to the extent indicated below.

37 CFR 1.183 states that:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

With regard to the petition under 37 CFR 1.183, petitioner asserts that as petitioner acted diligently, no period of time should be disclaimed.

The filing of a terminal disclaimer as required by 37 CFR 1.137(c) is not a substitute for diligence in prosecuting and seeking revival of an application. In re Application of Takeo, 17 USPQ2d 1155, 1158 (Comm'r Pat. 1990); 1124 Official Gazette 33 (March 19, 1991). Likewise, the showing of diligence required to obtain revival of an application under 37 CFR 1.137(a) is not a substitute for a terminal disclaimer under 37 CFR 1.137(c). That is, that an applicant have acted diligently is a prerequisite to revival of the application under 37 CFR 1.137(a) with the condition of the filing of a terminal disclaimer under 37 CFR

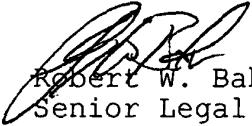
1.137(c); it is not an "extraordinary situation" in which "justice requires" waiver of the regulations under 37 CFR 1.183.

The period to be disclaimed under 37 CFR 1.137(c) in excess of twenty-seven (27) months, however, will be waived pursuant to 37 CFR 1.183.

The Terminal Disclaimer filed on March 29, 1995 has been accepted.

Any continuing application filed from this application must contain a copy of the Terminal Disclaimer. The copy of the Terminal Disclaimer must be filed with a cover letter requesting the terminal disclaimer be recorded on the continuing application. A copy of this decision should be attached to the cover letter.

The file is being forwarded to Application Processing Division.



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